IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CWP No.10028 of 2007
Date of decision: 10.7.2007

Sampuran Singh.

-----Petitioner

Vs.

State of Punjab and others.

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA

Present: Mr. N.P. Mittal, Advocate
for the petitioner.

ORDER:

This petition challenges order of dismissal of the petitioner (Annexure P-3).

Case of the petitioner is that he was appointed as J.E.-II in the year 1992 with Punjab State Electricity Board. He was convicted under Prevention of Corruption Act, 1988 by the Special Judge, Rupnagar on 13.4.2007 and awarded Rigorous Imprisonment for two years and six months against which, an appeal is pending in this Court.

Challenge to the order of dismissal is on the following grounds:-

(i) The order of conviction is not final as appeal is pending.

(ii) The order has been passed without application of mind.

(iii) The order has not been passed by the competent authority.

Re. (i): In support of the first point, learned counsel for the petitioner relies upon judgments of this Court in ***Jagtar Singh v. The State of Punjab and another*** 1989 (5) SLR 109 and ***Kulwant Singh v. The Deputy District Primary Education Officer, Gurdaspur and another*** 1997(1) SLR 403. He has also relied upon a news item (Annexure P-4) with regard to the case of Ms. Jayalalitha, who was appointed Chief Minister, though convicted, appeal against conviction being pending.

The contention has no merit as the law on the point is well-settled.

In ***K.C. Sareen v. C.B.I., Chandigarh*** AIR 2001 SC 3320, wherein it was observed:-

> "11. ..... The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. When 'a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the

> other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself. Hence, it is necessary that the Court should not aid the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a Court order suspending the conviction."

In view of judgment of the Hon'ble Supreme Court, the judgment relied upon by learned counsel for the petitioner may not be gone into.

It is well known that view taken by the Madras High Court in the case of Ms. Jayalalitha in respect of which a news item, Annexure P-4, has been relied upon by learned counsel for the petitioner, was reversed by the Hon'ble Supreme Court in ***B.R. Kapur v. State of Tamilnadu*** AIR 2001 SC 3435. Relevant extracts of the said judgment are as under:-

> "34. It is true that the order of the High Court at Madras on the application of the second respondent states, "Pending criminal appeals the sentence of imprisonment alone is suspended and the petitioners shall be released on bail .....", but this has to be read in the context of S. 389 under which the power was exercised. Under S. 389 an appellate Court may order that "the execution of the

sentence or order appealed against be suspended....."
It is not within the power of the appellate Court to suspend the sentence; it can only suspend the execution of the sentence pending the disposal of appeal. The suspension of the execution of the senctence does not alter or affect the fact that the offender has been convicted of a grave offence and has attracted the sentence of imprisonment of not less than two years. The suspension of the execution of the sentences, therefore, does not remove the disqualification against the second respondent. The suspension of the sentence, as the Madras High Court erroneously called it, was in fact only the suspension of the execution of the sentences pending the disposal of the appeals filed by the second respondent. The fact that she secured the suspension of the execution of the sentences against her did not alter or affect the convictions and the sentences imposed on her and she remained disqualified from seeking legislative office under S. 8(3).

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40. In much the same vein, it was submitted that the presumption of innocence continued until the final judgment affirming the conviction and sentence was passed and, therefore, no disqualification operated as of now against the second respondent. Before we advert to the four judgments relied upon in support of this submission, let us clear the air. When a lower Court convicts an accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The excution of the sentence can be stayed by an appellate Court and the accused released on bail. In many cases, the accused is released on bail so that the appeal is not rendered infructuous, at least in part, because the accused has already, undergone

> imprisonment. If the appeal of the accused succeeds the conviction is wiped out as cleanly as if it had never existed and the sentence is set aside. A successful appeal means that the stigma of the offence is altogether erased. But that it is not to say that the presumption of innocence continues after the conviction by the trial Court. That conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well.
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> 58. We are of the view that a person who is convicted for a criminal offence and sentenced to imprisonment for a period of not less than two years cannot be appointed the Chief Minister of a State under Art. 164(1) read with sub-art. (4) and cannot continue to function as such.

Accordingly, there is no substance in the first point raised on behalf of the petitioner.

Re.(ii): Learned counsel for the petitioner relied upon judgment of the Hon'ble Supreme Court in ***Union of India and another v. Tulsiram Patel and others*** AIR 1985 SC 1416, to submit that after conviction, a Government servant can be dismissed from service only if he is guilty of conduct deserving penalty of dismissal. Relevant observation of the Hon'ble Supreme Court relied upon by learned counsel for the petitioner are as under:-

> "62. Before, however, any clause of the second proviso can come into play the condition laid down in it must be satisfied. The condition for the application of each of these

clauses is different. In the case of clause (a) a government servant must be guilty of conduct deserving the penalty of dismissal, removal or reduction in rank which conduct has led to him being convicted on a criminal charge. In the case of clause (b) the disciplinary authority must be satisfied that it is not reasonably practicable to hold an inquiry. In the case of clause (c) the President or the Governor of a State, as the case may be, must be satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry. When these conditions can be said to be fulfilled will be discussed later while dealing separately with each of the three clauses. The paramount thing, however, to bear in mind is that the second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311 (2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry. The extent to which a government servant can be denied his right to an inquiry formed the subject-matter of considerable debate at the Bar and we, therefore, now turn to the question whether under the second proviso to Article 311(2) even though the inquiry is dispensed with some opportunity at least should not be afforded to the government servant so that he is not left

> wholly without protection, As most of the arguments on this part of the case were common to all the three clauses of the second proviso, it will be convenient at this stage to deal. at one place with all the arguments on this part of the case, leaving aside to be separately dealt with the other arguments pertaining only to a particular clause of the second proviso."

There is no dispute with the legal proposition. In the present case, the petitioner has been held guilty of corruption and in the order of dismissal, Annexure P-3, he has been dismissed from service on that ground. It cannot be argued that the person convicted for corruption is not guilty of misconduct, deserving penalty of dismissal. It is also worthwhile to refer to observations of the Hon'ble Supreme Court in the above judgment in para 70:-

> "70..... It is in public interest and for public good that a government servant who has been convicted of a grave and serious offence or one rendering him unfit to continue in office should be summarily dismissed or removed from service instead of being allowed to continue in it at public expense and to public deteriment....."

Thus, the contention is liable to be rejected.

Re. (iii): It has been submitted that appointment of the petitioner was by Chief Engineer, Distribution/Operation (Central), respondent No.4, while order of dismissal has been passed by Chief Engineer, Opeation (South), respondent No.3.

There is no merit in the submission in view of law laid down by the Hon'ble Supreme Court in ***Mahesh Prasad v. State of Uttar Pradesh*** AIR 1955 SC 70, wherein it was observed:-

> "5.....These provisions cannot be read as implying that the removal must be by the very same authority who made the appointment or by his direct superior. It appears to us to be enough that the removing authority is of the same rank or grade."

Learned counsel for the petitioner also submitted that certain payments due to him have not been made.

This is not a matter which we can entertain in writ jurisdiction in the facts and circumstances of the present case. If so advised, the petitioner can take his remedies, for whatever amount he claims, in accordance with law.

Subject to above observations, the writ petition is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

July 10, 2007 **(AJAI LAMBA)**
ashwani **JUDGE**